

JAN 3 1 1992

IN THE

OFFICE OF THE CLERK

**Supreme Court of the United States**

OCTOBER TERM, 1991

MERRETT UNDERWRITING AGENCY MANAGEMENT LIMITED,  
THREE QUAYS UNDERWRITING MANAGEMENT LIMITED,  
JANSON GREEN MANAGEMENT LIMITED, MURRAY  
LAWRENCE & PARTNERS, D.P. MANN UNDERWRITING  
AGENCY LIMITED, ROBIN A.G. JACKSON, PETER N.  
MILLER, EDWARDS & PAYNE (UNDERWRITING AGEN-  
CIES) LIMITED AND STURGE REINSURANCE SYNDICATE  
MANAGEMENT LIMITED,

*Petitioners.*

v.

STATE OF CALIFORNIA, *et al.*,*Respondents.*

**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit**

**RESPONSE IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI  
PURSUANT TO RULE 12.4**

PAUL R. HAERLE

(Counsel of Record)

THELEN, MARRIN, JOHNSON &  
BRIDGESTwo Embarcadero Center  
San Francisco, CA 94111

(415) 392-6320

*Attorneys for Petitioner**Terra Nova Insurance  
Company Limited*

(Additional Attorneys Listed on Inside Cover)

MARTIN FREDERIC EVANS  
DONALD FRANCIS DONOVAN  
COLBY A. SMITH  
JEFFREY OESTERICHER  
DEBEVOISE & PLIMPTON  
875 Third Avenue  
New York, NY 10022  
(212) 909-6000

*Attorneys for Petitioners*  
*Unionamerica Insurance*  
*Company Ltd. and*  
*Continental Reinsurance*  
*Corporation (U.K.) Limited*

DAVID W. SLABY  
PETTIT & MARTIN  
333 West Santa Clara Street  
Suite 1000  
San Jose, CA 95113  
(408) 295-3210

*Attorneys for Petitioner*  
*CNA Re (U.K.) Ltd.*

MICHAEL L. McCLUGGAGE  
JAMES T. NYESTE  
MICHAEL R. BLANKSHAIN  
WILDMAN, HARROLD, ALLEN  
& DIXON  
225 West Wacker Drive  
Chicago, IL 60606  
(312) 201-2000

*Attorneys for Petitioner*  
*Kemper Reinsurance*  
*London, Ltd.*

JEROME N. LERCH  
MARTIN W. JOHNSON  
WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER  
555 Montgomery Street  
San Francisco, CA 94111  
(415) 433-0990

*Attorneys for Petitioner*  
*Excess Insurance*  
*Company, Ltd.*

FREDERICK B. LACEY  
MOLLY S. BOAST  
LAWRENCE W. POLLACK  
STEPHEN H. OREL  
LEBOEUF, LAMB, LEIBY  
& MACRAE  
520 Madison Avenue  
New York, NY 10022  
(212) 715-8000

*Attorneys for Petitioner*  
*Ballantyne, McKean &*  
*Sullivan Limited*

## **STATEMENT PURSUANT TO RULE 29.1**

The petitioners' affiliates for purposes of Rule 29.1 are as follows:

Petitioner Unionamerica Insurance Company Ltd.: The Continental Corporation, The Continental Insurance Company, The Hong Kong Fire Insurance Co. Limited, Continental Insurance Company (Europe) Ltd., Continental Reinsurance Corporation (U.K.) Limited.

Petitioner Continental Reinsurance Corporation (U.K.) Limited: The Continental Corporation, The Continental Insurance Company, The Hong Kong Fire Insurance Co. Limited, Continental Insurance Company (Europe) Ltd., Unionamerica Insurance Company Ltd.

Petitioner CNA Re (U.K.) Ltd.: Loews Corporation, CNA Financial Corporation, Continental Casualty Company, CNA Management Company, Ltd.

Petitioner Excess Insurance Company, Ltd.: ITT Corporation, ITT Hartford Group, Inc., Hartford Fire Insurance Company, Hartford International Insurance Company, London & Edinburgh Insurance Group, Ltd.

Petitioner Kemper Reinsurance London, Ltd.: Kemper Reinsurance Company, Kemper Europe Reassurances, S.A., Kemper Reinsurance Company, Kemper Corporation, Lumberman's Mutual Casualty Company, KREL Services Limited.

Petitioner Terra Nova Insurance Company Limited: Ian Morton Underwriting Agency Ltd.

Petitioner Ballantyne, McKean & Sullivan Limited: None within the meaning of Rule 29.1 of the Rules of the Supreme Court of the United States.

IN THE  
Supreme Court of the United States  
OCTOBER TERM, 1991

---

No. 91-1128

---

MERRETT UNDERWRITING AGENCY MANAGEMENT LIMITED,  
THREE QUAYS UNDERWRITING MANAGEMENT LIMITED,  
JANSON GREEN MANAGEMENT LIMITED, MURRAY  
LAWRENCE & PARTNERS, D.P. MANN UNDERWRITING  
AGENCY LIMITED, ROBIN A.G. JACKSON, PETER N.  
MILLER, EDWARDS & PAYNE (UNDERWRITING AGEN-  
CIES) LIMITED AND STURGE REINSURANCE SYNDICATE  
MANAGEMENT LIMITED,

*Petitioners,*

v.

STATE OF CALIFORNIA, *et al.*,

*Respondents.*

---

On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit

---

RESPONSE IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI  
PURSUANT TO RULE 12.4

---

Respondents Terra Nova Insurance Company Limited,  
Unionamerica Insurance Company Ltd., Continental Re-  
insurance Corporation (U.K.) Limited, CNA Re (U.K.)  
Ltd., Kemper Reinsurance London, Ltd., Excess Insur-  
ance Company, Ltd. and Ballantyne, McKean & Sullivan  
Limited submit this response pursuant to Supreme Court  
Rule 12.4 to the petition for a writ of certiorari bearing

No. 91-1128. The undersigned parties, all British corporations doing business in the London reinsurance market, are co-defendants in the district court with petitioners. By this response they support the arguments made in the petition and urge this Court to issue the writ it seeks.<sup>1</sup>

These respondents are similar to petitioners in most pertinent respects. In common with petitioners, they are all participants in the London reinsurance and retrocessional reinsurance market. Six of the seven signatories are reinsurers, all British corporations;<sup>2</sup> they are referred to in the complaints and in the district court opinion as "London Company Market" firms.<sup>3</sup> They operate in the same market and in substantially the same manner as do petitioners. They are subject to the Com-

<sup>1</sup> These respondents are petitioners in petition No. 91-1146.

<sup>2</sup> None of these six reinsurers is either "Lloyd's" or part of Lloyd's, notwithstanding the Court of Appeals' language at several points lumping together all defendants arguing the comity issue at "Lloyd's." See A-30 and 31. (Numbers following the letter "A" denote reference to the Appendix to the petition.)

The reinsurer signatories were also incorrectly lumped together by the Court of Appeals in its statement that "all of them [are] subsidiaries of American corporations . . ." (A-10) and the conclusion that it held followed that the "interests of Britain are at least diminished where the parties are subsidiaries of American corporations" (A-29). Aside from the fact that such a relationship does not exist as to all these parties, at no point did any plaintiff plead that any (much less all) of these reinsurers were owned by American corporations. The Court of Appeals stated that the district court so "found" (A-29). But clearly that court could not do so on a motion to dismiss and its comment on this point (A-75) must have derived from arguments made in plaintiffs' briefs rather than from anything alleged in any complaint. In any event, the principal point is that these respondents are all regulated British entities; their parentage should be irrelevant to the comity analysis.

<sup>3</sup> See, e.g., A-67. The plaintiffs named only six (6) such defendants out of approximately 100 reinsurers operating in the London Company Market. See Reinsurance Offices Association Annual Report 1990, p. 11.

panies Act 1985, the Insurance Companies Act 1982 and associated regulations and are supervised by the Secretary of State for Trade and Industry (A-6). The remaining respondent, Ballantyne, McKean & Sullivan Limited, is a reinsurance broker subject to regulation under the Lloyd's Acts. As a broker authorized to trade in the Lloyd's marketplace, it is supervised by the governing body of Lloyd's.

All of these respondents are defendants only in the three discrete claims of the complaints which deal with, and only with, conduct occurring in the London reinsurance market. Indeed, as plaintiffs' complaints make clear, these parties were brought into the case solely as London-market participants and not because of any alleged relationship with plaintiffs (or with any other insurance consumer for that matter) or because of any conduct allegedly undertaken in the United States. Further, none of the undersigned is alleged to be a co-conspirator as to any remaining count of the complaints, the Court of Appeals' implication (A-29) to the contrary notwithstanding.

The Ninth Circuit's international comity ruling raises a question of global import. As petitioners explain, this Court should issue the writ because (i) the courts of appeals have generated conflicting and confusing rulings on the application of principles of international comity to actions arising under the U.S. antitrust laws; (ii) this case presents the issue starkly because the Ninth Circuit found a significant conflict with the regulatory regime of a foreign nation, but nevertheless held that effects on United States commerce outweighed that conflict, even though the conduct at issue was wholly foreign and no U.S. parties were involved; and (iii) this Court has, as it must, regularly taken the lead in resolving questions concerning the reach of United States law in the international arena.

For these reasons and the others set forth in the petition, these respondents urge this Court to issue the writ.

Respectfully submitted,

**PAUL R. HAERLE**  
 (Counsel of Record)  
**THELEN, MARRIN, JOHNSON &**

**BRIDGES**  
 Two Embarcadero Center  
 San Francisco, Ca 94111  
 (415) 392-6320

*Attorneys for Petitioner*  
*Terra Nova Insurance*  
*Company Limited*

**MARTIN FREDERIC EVANS**  
**DONALD FRANCIS DONOVAN**  
**COLBY A. SMITH**

**JEFFREY OESTERICHER**  
**DEBEVOISE & PLIMPTON**  
 875 Third Avenue  
 New York, NY 10022  
 (212) 909-6000

*Attorneys for Petitioners*  
*Unionamerica Insurance*  
*Company Ltd. and*  
*Continental Reinsurance*  
*Corporation (U.K.) Limited*

**DAVID W. SLABY**  
**PETTIT & MARTIN**  
 333 West Santa Clara Street  
 Suite 1000  
 San Jose, CA 95113  
 (408) 295-3210

*Attorneys for Petitioner*  
*CNA Re (U.K.) Ltd.*

**MICHAEL L. MCCLUGGAGE**  
**JAMES T. NYESTE**  
**MICHAEL R. BLANKSHAIN**  
**WILDMAN, HARROLD, ALLEN**  
**& DIXON**

225 West Wacker Drive  
 Chicago, IL 60606  
 (312) 201-2000

*Attorneys for Petitioner*  
*Kemper Reinsurance*  
*London, Ltd.*

**JEROME N. LERCH**  
**MARTIN W. JOHNSON**  
**WILSON, ELSER, MOSKOWITZ,**  
**EDELMAN & DICKER**

555 Montgomery Street  
 San Francisco, CA 94111  
 (415) 433-0990

*Attorneys for Petitioner*  
*Excess Insurance*  
*Company, Ltd.*

**FREDERICK B. LACEY**  
**MOLLY S. BOAST**  
**LAWRENCE W. POLLACK**  
**STEPHEN H. OREL**

**LEBOEUF, LAMB, LEIBY**  
**& MACRAE**  
 520 Madison Avenue  
 New York, NY 10022  
 (212) 715-8000

*Attorneys for Petitioner*  
*Ballantyne, McKean &*  
*Sullivan Limited*